IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3874 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GULBIBEN @ GULIBEN, W/O BHANABHAI DHODHIYA PATEL

Versus

STATE OF GUJARAT, THROUGH SECRETARY

Appearance:

MR MM TIRMIZI for Petitioner

MR SJ DAVE, AGP for respondent No.1-State.

RULE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 24-2-2000, passed by

the Police Commissioner, Surat,and she has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of publoic order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Learned counsel for the petitioner has restricted his arguments only on the point that there is delay in deciding the representation. Learned counsel for the petitioner has argued that the petitioner sent first representation on 10-3-2000 and second representation on 7-4-2000 and by way of two representations the petitioner demanded certain documents from the authority, but same have not been supplied by the authority till today. Whereas learned A.G.P. Mr. S.J.Dave after verifying the papers submitted that the resprsentation dated 7-4-2000 has been decided on 17-4-2000 and by way of that the authority has directed the Commissioner of Police, Surat, to provide documents demanded by the petitioner. But the fact remains that the same have not been provided to the petitioner within reasonable period. Even there is delay of more than 10 days in deciding the representation for which learned counsel for the petitioner has relied upon a decision reported in upon a decision reported in AIR 1999 SC 884 Rajanmal v. State of Tamil Nadu and another ,wherein it is held as under ;

> "The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. "

4. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 24-2-2000 passed against the detenu is hereby quashed. The detenu Gulbiben @ Guliben w/o Bhanabhai Dahyabhai Dhodhiya Patel is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as

to costs.

(R.P.Dholakia, J.)

*mithabhai